

AMENDED IN ASSEMBLY MAY 16, 2001

AMENDED IN ASSEMBLY APRIL 26, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1537**

**Introduced by Assembly Member Horton**

February 23, 2001

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An act to amend Sections 125.4, 135, 605, 634.5, 709, 710, 802, 803, 1086, 1128.1, 1253.3, and 1735.1 of, and to add Sections 710.6, 804, 1119, and 1141.1 to, the Unemployment Insurance Code, relating to unemployment insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1537, as amended, Horton. Unemployment insurance: Indian tribes.

The Federal Unemployment Tax Act provides that services performed in the employ of state and local governments are excluded from the definition of employment for purposes of the federal act. Those entities are subject to California's unemployment insurance laws. Recent changes in federal law treat Indian tribes in the same manner as state and local governments.

This bill would revise and recast various provisions of the state unemployment insurance law to conform to recent changes in federal law, which treat Indian tribes in the same manner that state and local governments are treated, except as specified. The bill would provide that its provisions shall have a retroactive effect from December 21, 2000, the effective date of the changes in federal law.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 125.4 of the Unemployment Insurance  
2 Code is amended to read:  
3 125.4. “American employer” means any of the following:  
4 (a) An individual who is a resident of the United States.  
5 (b) A partnership, if two-thirds or more of the partners are  
6 residents of the United States.  
7 (c) A trust, if all of the trustees are residents of the United  
8 States.  
9 (d) A corporation organized under the laws of the United States  
10 or of any state.  
11 (e) A limited liability company organized under the laws of the  
12 United States or of any state.  
13 (f) Any Indian tribe as described by subsection (u) of Section  
14 3306 of Title 26 of the United States Code.  
15 SEC. 2. Section 135 of the Unemployment Insurance Code is  
16 amended to read:  
17 135. (a) “Employing unit” means any individual or type of  
18 organization that has in its employ one or more individuals  
19 performing services for it within this state, and includes but is not  
20 limited to, the following individuals and organizations:  
21 (1) Any individual or type of organization or public entity that  
22 elects coverage pursuant to any provision of this division.  
23 (2) Any joint venture, partnership, association, trust, estate,  
24 joint stock company, insurance company, corporation whether  
25 domestic or foreign, limited liability company, whether domestic  
26 or foreign, community chest, fund, or foundation.  
27 (3) Any public entity. As used in this section, “public entity”  
28 means the State of California (including the Trustees of the  
29 California State University), any instrumentality of this state  
30 (including the Regents of the University of California), any  
31 political subdivision of this state or any of its instrumentalities, a  
32 county, city, district (including the governing board of any school  
33 district or community college district, any county board of  
34 education, any county superintendent of schools, or any personnel  
35 commission of a school district or community college district that



1 has a merit system pursuant to any provision of the Education  
2 Code), entities receiving state money to conduct county fairs and  
3 agricultural fairs pursuant to Sections 25905 and 25906 of the  
4 Government Code and that perform no other functions, any public  
5 authority, public agency, or public corporation of this state, any  
6 instrumentality of more than one of the foregoing, and any  
7 instrumentality of any of the foregoing and one or more other  
8 states or political subdivisions.

9 (4) Any instrumentality of the United States required to make  
10 payments under this division.

11 (5) The receiver, trustee in bankruptcy, trustee or successor  
12 thereof, and the legal representative of a deceased person.

13 (6) Any Indian tribe as described by subsection (u) of Section  
14 3306 of Title 26 of the United States Code.

15 (b) All individuals performing services within this state for any  
16 employing unit that maintains two or more separate  
17 establishments within this state shall be deemed to be employed by  
18 a single employing unit for all the purposes of this division. This  
19 subdivision does not apply to any Indian tribe (as described by  
20 subsection (u) of Section 3306 of Title 26 of the United States  
21 Code) and the subdivisions, subsidiaries, or other business  
22 enterprises wholly owned by the Indian tribe if the tribe chooses  
23 to treat those subdivisions, subsidiaries, or other business  
24 enterprises as separate business entities for the purposes of Section  
25 803.

26 SEC. 3. Section 605 of the Unemployment Insurance Code is  
27 amended to read:

28 605. (a) Except as provided by Section 634.5,  
29 “employment” for the purposes of this part and Parts 3  
30 (commencing with Section 3501) and 4 (commencing with  
31 Section 4001) includes all service performed by an individual  
32 (including blind and otherwise handicapped individuals) for any  
33 public entity or Indian tribe, if the service is excluded from  
34 “employment” under the Federal Unemployment Tax Act solely  
35 by reason of paragraph (7) of Section 3306(c) of that act.

36 (b) For purposes of this section:

37 (1) “Public entity” means the State of California (including the  
38 Trustees of the California State University and Colleges, and the  
39 California Industries for the Blind), any instrumentality of this  
40 state (including the Regents of the University of California), any

1 political subdivision of this state or any of its instrumentalities, a  
2 county, city, district (including the governing board of any school  
3 district or community college district, any county board of  
4 education, any county superintendent of schools, or any personnel  
5 commission of a school district or community college district that  
6 has a merit system pursuant to any provision of the Education  
7 Code), entities conducting fairs as identified in Sections 19418 to  
8 19418.3, inclusive, of the Business and Professions Code, any  
9 public authority, public agency, or public corporation of this state,  
10 any instrumentality of more than one of the foregoing, and any  
11 instrumentality of any of the foregoing and one or more other  
12 states or political subdivisions.

13 (2) “Indian tribe” means any Indian tribe described by  
14 subsection (u) of Section 3306 of Title 26 of the United States  
15 Code.

16 SEC. 4. Section 634.5 of the Unemployment Insurance Code  
17 is amended to read:

18 634.5. Notwithstanding any other provision of this code or  
19 any other code or law, no provision of this code or any other code  
20 or law excluding service from “employment” shall apply to any  
21 entity defined by Section 605 or to any nonprofit organization  
22 described by Section 608, except as provided by this section. With  
23 respect to any entity defined by Section 605 or any nonprofit  
24 organization described by Section 608, “employment” does not  
25 include service excluded under Sections 629, 631, 635, and 639 to  
26 648, inclusive, or service performed in any of the following:

27 (a) In the employ of (1) a church or convention or association  
28 of churches or (2) an organization which is operated primarily for  
29 religious purposes and which is operated, supervised, controlled,  
30 or principally supported by a church or convention or association  
31 of churches.

32 (b) By a duly ordained, commissioned, or licensed minister of  
33 a church in the exercise of his or her ministry or by a member of  
34 a religious order in the exercise of duties required by the order.

35 (c) In the employ of any entity defined by Section 605, if the  
36 service is performed by an individual in the exercise of his or her  
37 duties as any of the following:

38 (1) An elected official.

39 (2) A member of a legislative body, or a member of the  
40 judiciary, of a state or political subdivision thereof, or of an Indian

1 tribe as described by subsection (u) of Section 3306 of Title 26 of  
2 the United States Code.

3 (3) A member of a State National Guard or Air National Guard.

4 (4) An employee serving on a temporary basis in case of fire,  
5 storm, snow, earthquake, flood, or other similar emergency.

6 (5) In a position which, under or pursuant to state or tribal law,  
7 is designated as either of the following:

8 (A) A major nontenured policymaking or advisory position.

9 (B) A policymaking or advisory position, the performance of  
10 the duties of which ordinarily does not require more than eight  
11 hours per week.

12 (6) As an election official or election worker if the amount of  
13 remuneration reasonably expected to be received by the individual  
14 during the calendar year for services as an election official or  
15 election worker is less than two hundred dollars (\$200), provided  
16 that this paragraph shall not take effect unless and until the service  
17 is excluded from service to which paragraph (1) of subdivision (a)  
18 of Section 3309 of Title 26 of the United States Code applies by  
19 reason of exemption under subdivision (b) of Section 3309 of that  
20 act.

21 (d) Except as provided by Section 605.5, by an individual  
22 receiving rehabilitation or remunerative work in a facility  
23 conducted for the purpose of carrying out a program of either:

24 (1) Rehabilitation for individuals whose earning capacity is  
25 impaired by age or physical or mental deficiency or injury.

26 (2) Providing remunerative work for individuals who because  
27 of their impaired physical or mental capacity cannot be readily  
28 absorbed in the competitive labor market.

29 (e) As part of an unemployment work relief or work training  
30 program assisted or financed in whole or in part by any federal  
31 agency, an agency of a state or political subdivision thereof, or of  
32 an Indian tribe as described by subsection (u) of Section 3306 of  
33 Title 26 of the United States Code, by an individual receiving work  
34 relief or work training.

35 (f) By a ward or an inmate of a custodial or penal institution  
36 pursuant to Article 1 (commencing with Section 2700), Article 4  
37 (commencing with Section 2760), and Article 5 (commencing  
38 with Section 2780) of Chapter 5 of, and Article 1 (commencing  
39 with Section 2800) of Chapter 6 of, Title 1 of Part 3 of the Penal  
40 Code, Section 4649 and Chapter 1 (commencing with Section

1 4951) of Part 4 of Division 4 of the Public Resources Code, and  
2 Sections 883, 884, and 1768 of the Welfare and Institutions Code.

3 (g) By an individual under the age of 18 years in the delivery  
4 or distribution of newspapers or shopping news, not including  
5 delivery or distribution to any point for subsequent delivery or  
6 distribution.

7 (h) By an individual in, and at the time of, the sale of  
8 newspapers or magazines to ultimate consumers, under an  
9 arrangement under which the newspapers or magazines are to be  
10 sold by him or her at a fixed price, his or her compensation being  
11 based on retention of the excess of the price over the amount at  
12 which the newspapers or magazines are charged to him or her  
13 whether or not he or she is guaranteed a minimum amount of  
14 compensation for the service, or is entitled to be credited with the  
15 unsold newspapers or magazines turned back.

16 (i) As a substitute employee whose employment does not  
17 increase the size of the employer's normal workforce, whose  
18 employment is required by law, and whose employment as a  
19 substitute employee does not occur on more than 60 days during  
20 the base period, except that this subdivision shall not take effect  
21 unless and until the United States Secretary of Labor, or his or her  
22 designee, finds that this subdivision is in conformity with federal  
23 requirements.

24 (j) As a participant in a national service program carried out  
25 using assistance provided under Section 12571 of Title 42 of the  
26 United States Code.

27 This section shall become operative on July 1, 1978.

28 SEC. 5. Section 709 of the Unemployment Insurance Code is  
29 amended to read:

30 709. Any local public entity located in this state specified in  
31 paragraph (3) of subdivision (a) of Section 135 or Indian tribe  
32 specified in paragraph (6) of subdivision (a) of Section 135 may  
33 elect to become an employer subject to Part 2 (commencing with  
34 Section 2601) of this division with respect to all its employees,  
35 including those with civil service or tenure positions, and may file  
36 its written election with the director. That election may be made  
37 on its own motion by the appropriate governing board of the local  
38 public entity or Indian tribe making the election, or may be made  
39 by the governing board pursuant to a petition signed by a majority  
40 of the employees (including those with civil service or tenure

positions) requesting the governing board to file an election with the director. Upon the filing of an election, the filing local public entity or Indian tribe shall, upon approval by the director, become an employer subject to Part 2 (commencing with Section 2601) to the same extent as other employers, and services performed by its employees, including those with civil service or tenure positions, shall constitute employment subject to that part. Beginning at that time, it shall withhold from the wages of employees the contributions required for unemployment compensation disability benefits.

SEC. 6. Section 710 of the Unemployment Insurance Code is amended to read:

710. (a) Any public entity or Indian tribe for which services that do constitute employment under Section 605 are performed and for which other services that do not constitute employment are performed may elect to become an employer subject to this part and Parts 3 (commencing with Section 3501) and 4 (commencing with Section 4001) of this division for not less than two calendar years with respect to those other services and to have those other services performed by its employees constitute employment subject to this part and Parts 3 and 4 for that period. Upon the filing of an election the filing public entity or Indian tribe shall, upon approval by the director, become an employer subject to this part and Parts 3 and 4 with respect to the services covered to the same extent as other employers, and those services performed by its employees, including those with civil service or tenure positions, shall constitute employment subject to this part and Parts 3 and 4 effective on the first day of the calendar quarter following the quarter in which the election is filed.

(b) The public entity or Indian tribe may exclude from coverage under an election pursuant to this section any service excluded under Section 634.5.

(c) Any public entity or Indian tribe that has elected coverage under this section may elect any method of financing coverage otherwise permitted under Section 803 or Article 6 (commencing with Section 821), but the same method of financing coverage shall apply to all coverage by the public entity. An Indian tribe may make separate elections for itself and for each subdivision, subsidiary, or business enterprise wholly owned by that Indian tribe. Subdivision (b) of Section 802 shall apply to any election



1 under Section 803, except that any election under Section 803 shall  
2 be terminated on the effective date of the termination of an election  
3 for coverage under this section.

4 (d) The director may require from the public entity or Indian  
5 tribe employment, financial, statistical, or other information and  
6 reports, properly verified, as may be deemed necessary by the  
7 director to carry out his or her duties under this division, which  
8 shall be filed with the director at the time and in the manner  
9 prescribed by him or her.

10 (e) The director may tabulate and publish information obtained  
11 pursuant to this section in statistical form and may divulge the  
12 name of the public entity or Indian tribe.

13 (f) The public entity or Indian tribe shall keep work records as  
14 prescribed by the director for the proper administration of this  
15 division.

16 (g) Except as inconsistent with the provisions of this section,  
17 the provisions of this division and authorized regulations shall  
18 apply to any matter arising pursuant to this section.

19 SEC. 7. Section 710.6 is added to the Unemployment  
20 Insurance Code, to read:

21 710.6. (a) Notwithstanding Section 709, any Indian tribe as  
22 described by subsection (u) of Section 3306 of Title 26 of the  
23 United States Code, *including those tribes not covered by the*  
24 *Tribal-State Gaming Compact*, may elect to become an employer  
25 subject to Part 2 (commencing with Section 2601) with respect to  
26 all employees who meet either of the following conditions:

27 (1) Are employed in one or more distinct establishments or  
28 places of business.

29 (2) Are a part of an employee bargaining unit provided the  
30 election is the result of a negotiated agreement between the Indian  
31 tribe and the recognized employee organization. The Indian tribe  
32 also may elect to provide coverage to its management and  
33 confidential employees and to its employees who are not a part of  
34 an employee bargaining unit, but the election by the bargaining  
35 unit shall not be contingent upon coverage of other employees of  
36 the Indian tribe.

37 (b) Upon filing of an election, the filing entity shall, upon  
38 approval by the director, become an employer subject to Part 2  
39 (commencing with Section 2601) to the same extent as other  
40 employers, and services performed by its employees who are



subject to an election under this section shall constitute employment subject to that part. Sections 986 and 2903 apply to an employer making an election pursuant to this section.

*(c) This section does not affect the requirement that Indian tribes covered by the Tribal-State Gaming Compact be subject to Part 2 (commencing with Section 2601).*

SEC. 8. Section 802 of the Unemployment Insurance Code is amended to read:

802. (a) The State of California, any other public entity (as defined by Section 605), or any Indian tribe as described by subsection (u) of Section 3306 of Title 26 of the United States Code, or any subdivision, subsidiary, or business enterprise wholly owned by that Indian tribe, for which services are performed that do constitute employment under Section 605 may, in lieu of the contributions required of employers, elect to finance its liability for unemployment compensation benefits, extended duration benefits, and federal-state extended benefits with respect to these services by any method of financing coverage that is permitted under Section 803.

(b) Any election under Section 803 for financing coverage under this section shall take effect with respect to services performed from and after the first day of the calendar quarter in which the election is filed with the director, and shall continue in effect for not less than two full calendar years, unless the election is cancelled by the director pursuant to paragraph (2) of subdivision (g) of Section 803. Thereafter the election under Section 803 may be terminated as of January 1 of any calendar year only if the state or other public entity or Indian tribe, on or before the 31st day of January of that year, has filed with the director a written application for termination. The director may for good cause waive the requirement that a written application for termination shall be filed on or before the 31st day of January. In no event shall financing coverage by an election under Section 803 be valid that would establish any different method of financing coverage for any calendar quarter where an election for coverage has also been made by the state or other public entity or Indian tribe under any provision of Article 4 (commencing with Section 701) of this chapter.

(c) The director may require from the state and other public entity and Indian tribe, including any agent thereof, such

1 employment, financial, statistical, or other information and  
2 reports, properly verified, as may be deemed necessary by the  
3 director to carry out his or her duties under this division, which  
4 shall be filed with the director at the time and in the manner  
5 prescribed by him or her.

6 (d) The director may tabulate and publish information obtained  
7 pursuant to this section in statistical form and may divulge the  
8 name of the state or other public entity or Indian tribe.

9 (e) The state and other public entity and Indian tribe, including  
10 any agent thereof, shall keep any work records as may be  
11 prescribed by the director for the proper administration of this  
12 division.

13 (f) Except as inconsistent with the provisions of this section,  
14 the provisions of this division and authorized regulations apply to  
15 any matter arising pursuant to this section.

16 SEC. 9. Section 803 of the Unemployment Insurance Code is  
17 amended to read:

18 803. (a) As used in this section, “entity” means any  
19 employing unit that is authorized by any provision of Article 4  
20 (commencing with Section 701) or by Section 801 or 802 to elect  
21 a method of financing coverage permitted by this section.

22 (b) In lieu of the contributions required of employers, an entity  
23 may elect any one of the following:

24 (1) To pay into the Unemployment Fund the cost of benefits,  
25 including extended duration benefits and federal-state extended  
26 benefits, paid based on base period wages with respect to  
27 employment for the entity and charged to its account in the manner  
28 provided by Section 1026, pursuant to authorized regulations that  
29 shall prescribe the rate or amount, time, manner, and method of  
30 payment or advance payment or providing a good and sufficient  
31 bond to guarantee payment of contributions.

32 (2) Two or more entities may, pursuant to authorized  
33 regulations, file an application with the director for the  
34 establishment of a joint account for the purpose of determining the  
35 rate of contributions they shall pay into the Unemployment Fund  
36 to reimburse the fund for benefits paid with respect to employment  
37 for those entities. The members of the joint account may share the  
38 cost of benefits, including extended duration benefits and  
39 federal-state extended benefits, paid based on the base period  
40 wages with respect to employment for those members and charged

to the joint account in the manner provided by Section 1026. The director shall prescribe authorized regulations for the establishment, maintenance, and dissolution of joint accounts, and for the rate or amount, time, manner, and method of payment or advance payment or providing a good and sufficient bond to guarantee payment of contributions by the members of joint accounts, on the cost of benefits charged in the manner provided by Section 1026.

(c) Sections 1030, 1031, 1032, and 1032.5, and any provision of this division for the noncharging of benefits to the account of an employer, shall not apply to an election under subdivision (b). The cost of benefits charged to an entity under this section shall include, but not be limited to, benefits or payments improperly paid in excess of a weekly benefit amount, or in excess of a maximum benefit amount, or otherwise in excess of the amount that should have been paid, due to any computational or other error of any type by the Employment Development Department or the Department of Benefit Payments, whether or not the error could be anticipated.

(d) In making the payments prescribed by subdivision (b), there shall be paid or credited to the Unemployment Fund, either in advance or by way of reimbursement, as may be determined by the director, any sums he or she estimates the Unemployment Fund will be entitled to receive from each entity for each calendar quarter, reduced or increased by any sum by which he or she finds that his or her estimates for any prior calendar quarter were greater or less than the amounts which should have been paid to the fund. The estimates may be made upon the basis of statistical sampling, or any other method as may be determined by the director.

Upon making that determination, the director shall give notice of the determination, pursuant to Section 1206, to the entity. The director may cancel any contributions or portion thereof that he or she finds has been erroneously determined.

The director shall charge to any special fund, that is responsible for the salary of any employee of an entity, the amount determined by the director for which the fund is liable pursuant to this section. The contributions due from the entity shall be paid from the liable special fund, the General Fund, or other liable fund to the Unemployment Fund by the Controller or other officer or person responsible for disbursements on behalf of the entity within 30

1 days of the date of mailing of the director's notice of determination  
2 to the entity. The director for good cause may extend for not to  
3 exceed 60 days the time for paying without penalty the amount  
4 determined and required to be paid. Contributions are due upon the  
5 date of mailing of the notice of determination and are delinquent  
6 if not paid on or before the 30th day following the date of mailing  
7 of the notice.

8 (e) Any entity that fails to pay the contributions required within  
9 the time required shall be liable for interest on the contributions at  
10 the adjusted annual rate and by the method established pursuant to  
11 Section 19521 of the Revenue and Taxation Code from and after  
12 the date of delinquency until paid, and any entity that without good  
13 cause fails to pay any contributions required within the time  
14 required shall pay a penalty of 10 percent of the amount of the  
15 contributions. If the entity fails to pay the contributions required  
16 on or before the delinquency date, the director may assess the  
17 entity for the amount required by the notice of determination. This  
18 subdivision shall not apply to employers electing financing under  
19 Section 821, for amounts due after December 31, 1992.

20 (f) Article 8 (commencing with Section 1126) of Chapter 4 of  
21 Part 1 with respect to the assessment of contributions, and Chapter  
22 7 (commencing with Section 1701) of Part 1 with respect to the  
23 collection of contributions, shall apply to the assessments  
24 provided by this section. Sections 1177 to 1184, inclusive, relating  
25 to refunds and overpayments, shall apply to amounts paid to the  
26 Unemployment Fund pursuant to this section. Sections 1222,  
27 1223, 1224, 1241, and 1242 shall apply to matters arising under  
28 this section.

29 (g) (1) The director may terminate the election of any entity  
30 for financing under this section if the entity is delinquent in the  
31 payment of advances or reimbursements required by the director  
32 under this section. After any termination the entity may again  
33 make an election pursuant to this section but only if it is not  
34 delinquent in the payment of contributions and not delinquent in  
35 the payment of advances or reimbursements required by the  
36 director under this section.

37 (2) In the case of an Indian tribe (as described by subsection (u)  
38 of Section 3306 of Title 26 of the United States Code), the director  
39 shall terminate all elections for the tribe and all subdivisions,  
40 subsidiaries, and business enterprises wholly owned by that tribe

1 if the tribe or any subdivision, subsidiary, or business enterprise  
2 wholly owned by that tribe is delinquent in the payment of  
3 contributions, bonds, advances, reimbursements, or applicable  
4 penalties or interest required under this code. After any  
5 termination the Indian tribe may again make an election pursuant  
6 to this section but only if it is not delinquent in the payment of  
7 contributions, bonds, advances, reimbursements, or applicable  
8 penalties or interest required under this code.

9 (h) Notwithstanding any other provision of this section, no  
10 entity shall be liable for that portion of any extended duration  
11 benefits or federal-state extended benefits that is reimbursed or  
12 reimbursable by the federal government to the State of California.

13 (i) After the termination of any election under this section, the  
14 entity shall remain liable for its proportionate share of the cost of  
15 benefits paid and charged to its account in the manner provided by  
16 Section 1026, which are based on wages paid for services during  
17 the period of the election. That liability may be charged against any  
18 remaining balance of a prior reserve account used by the entity  
19 pursuant to Section 712 or 713. Any portion of the remaining  
20 balance shall be included in the reserve account of the entity  
21 following any termination of an election under this section which  
22 occurs prior to the expiration of a period of three consecutive years  
23 commencing with the effective date of the election. For purposes  
24 of Section 982, the period of an election under Section 803 shall,  
25 to the extent permitted by federal law, be included as a period  
26 during which a reserve account has been subject to benefit charges.

27 SEC. 10. Section 804 is added to the Unemployment  
28 Insurance Code, to read:

29 804. The director shall notify the United States Internal  
30 Revenue Service and the United States Department of Labor of the  
31 failure of any Indian tribe (as described by subsection (u) of  
32 Section 3306 of Title 26 of the United States Code) to make a  
33 payment or post a bond as required under subdivision (b) of  
34 Section 803 within 90 days of the delinquency date of a notice  
35 specifying the amount due under that subdivision. If the amount  
36 due is subsequently paid by the Indian tribe, the director shall  
37 notify the United States Internal Revenue Service and the United  
38 States Department of Labor of the satisfaction of the liability.

39 SEC. 11. Section 1086 of the Unemployment Insurance Code  
40 is amended to read:

1 1086. (a) Each employing unit within 15 days after becoming  
2 an employer as defined in this part shall register with the  
3 department on a form prescribed by the department.

4 (b) (1) Notwithstanding subdivision (a), any Indian tribe (as  
5 described by subsection (u) of Section 3306 of Title 26 of the  
6 United States Code) that employed one or more workers on or after  
7 December 21, 2000, and prior to the operative date of the statute  
8 adding this subdivision at the 2001 portion of the 2000–01 Regular  
9 Session of the Legislature that has not registered with the  
10 department by the operative date of the statute, shall register with  
11 the department within 15 days of that operative date.

12 (2) The subject date for employers who register with the  
13 department under the provisions of paragraph (1) shall be  
14 December 21, 2000, or the date that employer first hired an  
15 employee, whichever is later.

16 SEC. 12. Section 1119 is added to the Unemployment  
17 Insurance Code, to read:

18 1119. The director shall notify the United States Internal  
19 Revenue Service and the United States Department of Labor of the  
20 failure of any Indian tribe (as described by subsection (u) of  
21 Section 3306 of Title 26 of the United States Code) to make a  
22 payment of any amount required to be paid under this article within  
23 90 days of the date of a notice specifying the amount due. If the  
24 amount due is subsequently paid by the Indian tribe, the director  
25 shall notify the United States Internal Revenue Service and the  
26 United States Department of Labor of the satisfaction of the  
27 liability.

28 SEC. 13. Section 1128.1 of the Unemployment Insurance  
29 Code is amended to read:

30 1128.1. (a) If the director finds that an individual or business  
31 entity has exchanged money on behalf of an employer and the  
32 employer used the cash proceeds from the exchange to conceal the  
33 payment of wages with an intent to evade any provision of this  
34 code, the director shall assess a penalty against the individual or  
35 business entity in an amount equal to 100 percent of any assessed  
36 contributions that were based on the concealed wages. An  
37 employing unit subject to a penalty under Section 1128 shall not  
38 be assessed a penalty under this section for the same violation.

39 (b) For purposes of this section, “business entity” means a  
40 partnership, corporation, association, limited liability company, or



1 Indian tribe (as described by subsection (u) of Section 3306 of  
2 Title 26 of the United States Code).

3 (c) The penalty shall apply only when there is evidence that the  
4 individual or business entity who exchanged money knew that the  
5 employer intended to use the cash proceeds from the exchange to  
6 conceal the payment of wages and thereby avoid the payment of  
7 contributions or taxes required by this code.

8 SEC. 14. Section 1141.1 is added to the Unemployment  
9 Insurance Code, to read:

10 1141.1. The director shall notify the United States Internal  
11 Revenue Service and the United States Department of Labor of the  
12 failure of any Indian tribe (as described by subsection (u) of  
13 Section 3306 of Title 26 of the United States Code) to pay within  
14 90 days of the final date of an assessment any amounts assessed  
15 pursuant to the provisions of this article. If the assessment is  
16 subsequently paid by the Indian tribe, the director shall notify the  
17 United States Internal Revenue Service and the United States  
18 Department of Labor of the satisfaction of the liability.

19 SEC. 15. Section 1253.3 of the Unemployment Insurance  
20 Code is amended to read:

21 1253.3. (a) Notwithstanding any other provision of this  
22 division, unemployment compensation benefits, extended  
23 duration benefits, and federal-state extended benefits are payable  
24 on the basis of service to which Section 3309(a)(1) of the Internal  
25 Revenue Code of 1954 applies, in the same amount, on the same  
26 terms, and subject to the same conditions as benefits payable on the  
27 basis of other service subject to this division, except as provided  
28 by this section.

29 (b) Benefits specified by subdivision (a) based on service  
30 performed in the employ of a nonprofit organization, or of any  
31 entity as defined by Section 605, with respect to service in an  
32 instructional, research, or principal administrative capacity for an  
33 educational institution are not payable to any individual with  
34 respect to any week which begins during the period between two  
35 successive academic years or terms or, when an agreement  
36 provides instead for a similar period between two regular but not  
37 successive terms, during that period, or during a period of paid  
38 sabbatical leave provided for in the individual's contract, if the  
39 individual performs services in the first of the academic years or  
40 terms and if there is a contract or a reasonable assurance that the



1 individual will perform services for any educational institution in  
2 the second of the academic years or terms.

3 (c) Benefits specified by subdivision (a) based on service  
4 performed in the employ of a nonprofit organization, or of any  
5 entity as defined by Section 605, with respect to service in any  
6 other capacity than specified in subdivision (b) for an educational  
7 institution shall not be payable to any individual with respect to  
8 any week which commences during a period between two  
9 successive academic years or terms if the individual performs the  
10 service in the first of the academic years or terms and there is a  
11 reasonable assurance that the individual will perform the service  
12 in the second of the academic years or terms. However, if the  
13 individual was not offered an opportunity to perform the services  
14 for an educational institution for the second of the academic years  
15 or terms, the individual shall be entitled to a retroactive payment  
16 of benefits for each week for which the individual filed a timely  
17 claim for benefits and for which benefits were denied solely by  
18 reason of this subdivision. Retroactive benefits shall be claimed in  
19 accordance with the department's procedures which shall specify  
20 that except where the individual was entitled to benefits based on  
21 services performed for other than an educational institution, an  
22 individual who has a reasonable assurance of reemployment may  
23 satisfy the search for work requirement of subdivision (e) of  
24 Section 1253, by registering for work pursuant to subdivision (b)  
25 of Section 1253 during the period between the first and second  
26 academic terms or years. A claim for retroactive benefits may be  
27 made no later than 30 days following the commencement of the  
28 second academic year or term.

29 (d) Benefits specified by subdivision (a) based on service  
30 performed in the employ of a nonprofit organization, or of any  
31 entity as defined by Section 605, with respect to services specified  
32 by subdivision (b) or (c), are not payable to any individual with  
33 respect to any week that commences during an established and  
34 customary vacation period or holiday recess if the individual  
35 performs the services in the period immediately before the  
36 vacation period or holiday recess, and there is a reasonable  
37 assurance that the individual will perform the services in the period  
38 immediately following the vacation period or holiday recess.

39 (e) With respect to any services specified by subdivision (b) or  
40 (c), compensation payable on the basis of services in that capacity

1 may be denied as specified in subdivision (b), (c), or (d) to any  
2 individual who performed the services in an educational  
3 institution while in the employ of an educational service agency,  
4 and for this purpose the term “educational service agency” means  
5 a governmental agency or governmental entity that is established  
6 and operated exclusively for the purpose of providing the services  
7 to one or more educational institutions.

8 (f) Benefits specified by subdivision (a) based on service  
9 performed in the employ of a nonprofit organization, or of any  
10 entity as defined by Section 605, are not payable during the periods  
11 of time, and subject to the same conditions, contained in  
12 subdivisions (b), (c), (d), and (h), if the services are provided to,  
13 or on behalf of, an educational institution.

14 (g) For purposes of this section, “reasonable assurance”  
15 includes, but is not limited to, an offer of employment or  
16 assignment made by the educational institution, provided that the  
17 offer or assignment is not contingent on enrollment, funding, or  
18 program changes. An individual who has been notified that he or  
19 she will be replaced and does not have an offer of employment or  
20 assignment to perform services for an educational institution is not  
21 considered to have reasonable assurance.

22 (h) For purposes of this section, if the time for service  
23 performed during the period of and pursuant to any contract for  
24 any academic year or term by an individual for any employing unit  
25 as specified in subdivision (b) or (c) constitutes one-half or more  
26 of the time in total service performed for the employing unit by the  
27 individual during that same period for remuneration, all the  
28 services of the individual for the employing unit for that period  
29 shall be deemed subject to the benefit payment restriction  
30 provisions of this section.

31 (i) Any entity as defined by Section 605, with respect to any  
32 individual performing a service in any other capacity other than  
33 specified in subdivision (b) for an educational institution, shall  
34 provide a written statement indicating the following to the  
35 individual no later than 30 days before the end of the first of the  
36 academic years or terms:

37 (1) Whether or not there is a reasonable assurance of  
38 reemployment.

1 (2) Whether or not it is stated that the individual has no  
2 reasonable assurance of reemployment, that the individual should  
3 file a claim for benefits at the close of the academic year or term.

4 (3) If it is stated that the individual has reasonable assurance of  
5 reemployment, the written statement shall also inform the  
6 employee that he or she may file a claim for benefits and that the  
7 determination for eligibility for benefits is made by the  
8 Employment Development Department and not by the employer.

9 (4) If it is stated that the individual has reasonable assurance of  
10 reemployment, that the individual shall be entitled to a retroactive  
11 payment of benefits if the individual is not offered an opportunity  
12 to perform the services for the educational institution for the  
13 second of the academic years or terms, if the individual is  
14 otherwise eligible and he or she filed a claim for each week  
15 benefits are claimed, and if a claim for retroactive benefits is made  
16 no later than 30 days following the commencement of the second  
17 academic year or term.

18 SEC. 16. Section 1735.1 of the Unemployment Insurance  
19 Code is amended to read:

20 1735.1. (a) An individual who has been assessed under the  
21 provisions of Section 1128.1, or any officer, major stockholder, or  
22 other person having charge of the affairs of a business entity that  
23 has been assessed under the provisions of that section, shall be  
24 personally liable for the amount of contributions, withholdings,  
25 penalties, and interest due and unpaid by the employer, other than  
26 those under subdivisions (a) and (b) of Section 1128, for whom  
27 money was exchanged as described in Section 1128.1. The  
28 director may assess that person for the amount of contributions,  
29 withholdings, all penalties other than those under Section 1128,  
30 and interest. The provisions of Article 8 (commencing with  
31 Section 1126) and Article 9 (commencing with Section 1176) of  
32 Chapter 4 of Part 1 shall apply to assessments made pursuant to this  
33 section. Sections 1221, 1222, 1223, and 1224 shall apply to  
34 assessments made pursuant to this section. With respect to that  
35 person, the director shall have all the collection remedies set forth  
36 in this chapter.

37 (b) For purposes of this section, “business entity” means a  
38 partnership, corporation, association, limited liability company, or  
39 Indian tribe (as described by subsection (u) of Section 3306 of  
40 Title 26 of the United States Code).

1     SEC. 17. The provisions of this act shall be retroactive to  
2     December 21, 2000.

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